

in the Chinese patent agency, together with the infringers in China and U.S., obstructed the application of my patent, thus, the initial lawyer was replaced by a new lawyer. However, the new lawyer amended the application documents of my patent. I complained the Chinese patent agency, and now the complaint is under investigation. As a result, the Chinese patent agency revoked the agency of my patent, which lead to that the US patent agency also revoked the agency of my patent because I am not its direct client. Thus, my patent lost the agencies both in China and in the US. The Chinese patent agency got my agency fees of about 400,000RMB during the agency, which includes about 200,000 RMB paid to the US patent agency. The Chinese and the US patent agencies obstructed the application of my patent after receiving the agency fees, which is obviously illegal. After that, I communicated with Susan, the lawyer in the US patent agency, and hoped her to continue working as my lawyer responsible for my patent. Susan recommended filing appeals, and I accepted her recommendations to have a try. As now it is very close to the final deadline (December 2, 2012), and I will not get sufficient help within this deadline. Thus, I am writing this letter to you, attached with my appeal. Please kindly help to transfer my letter and the attached appeal to the related department responsible for appeals about specific terms, so as to maintain the normal prosecution of my patent.

If you have any questions, please email me by
USAZHAOSHI@YAHOO.CN

Sincerely yours,

Zhao Bing

p/s: I will continue looking for a patent agency so as to turn my patent
back to the normal prosecution.

APPEAL

Appeler: Zhao Bing, the applicant of the US invention patent application No. 10/500,357 (Chinese citizen, ID card No. 110108195208166013)

Defendant: Brent W Herring, the patent examiner of the USPTO (Application/Management No. 10/500,357, Art unit: 3633)

Request of Appeal

Requesting the Board of Patent Appeal and interference to instruct the examiner of the present patent to withdraw the wrong examination comments on that **the use of the technical terms (i.e., the specific terms “Yixue”, “Taiji”, and “Gua”) cannot be approved**, so as to overcome the objection to the formality issue of the present patent, moving the present patent to the normal examination procedure and getting granted earlier.

Background

During the examination of the present patent, the Examiner persisted in that **the use of the technical terms (i.e., the specific terms “Yixue”, “Taiji”, and “Gua”) cannot be approved**, and these wrong objections heavily affect the normal examination of other portions of the present patent. For example, these wrong objections to the specific terms exist in

the office actions issued by the Examiner on January 15, 2010, and November 2, 2011. Below is my argument for the objections to the specific terms by the Examiner.

Objections to the claims by the Examiner

(I) Arguments for the objections to the specific terms in the claims

The office action issued by the USPTO on January 15, 2010 indicates that claims 32, 42, and 47 cannot be approved because of the use of the technical terms “Yixue”, “Taiji”, and “Gua”, in addition, the office action cites MPEP2141.03. After carefully studying the related portions of the MPEP, I am of the opinion that there are no contents in the MPEP that support the comments in the office action. Below is directly extracted from MPEP2141.03:

The person of ordinary skill in the art is a hypothetical person who is presumed to have known the relevant art at the time of the invention. Factors that may be considered in determining the level of ordinary skill in the art may include: (A) “type of problems encountered in the art;” (B) “prior art solutions to those problems;” (C) “rapidity with which innovations are made;” (D) “sophistication of the technology; and” (E) “educational level of active workers in the field. In a given

case, every factor may not be present, and one or more factors may predominate.”

The “hypothetical ‘person having ordinary skill in the art’ to which the claimed subject matter pertains would, of necessity have the capability of understanding the scientific and engineering principles applicable to the pertinent art.”

The terms “Yixue”, “Taiji”, and “Gua” involve the pertinent art of the Chinese architecture field, and the educational level of active workers in the field should refer to the educational level necessary to master the Chinese architecture technologies. The hypothetical person should have the capacity to understand the scientific and engineering principles adapted to the Chinese architecture.

Thus, the person of ordinary skill in the art should refer to a (educated) person well knowing the Chinese architecture technologies. There are also many persons in the US studying the Chinese architecture, even a lot of them are experts in the pertinent art. They are substantially similar with the persons well knowing the classic architecture (column-type, etc) or the persons well knowing the Spanish architecture (adobe roof, etc). The pertinent art in the present patent should refer to the art including the

Chinese architecture. In addition, the description provides the explanations of the related technical terms.

MPEP2141.01 does not mention that for the application of patents in the US, the languages of the claims must be easy to be understood by the technical persons in the application country. If the Examiner persists in the objection, please kindly let the Examiner to provide any evidence. As MPEP2141.01 does not provide the evidence itself, please kindly let the Examiner to withdraw the objection.

(II) Arguments for the objections to “Yixue”, “Taiji”, and “Gua” being ornamental

The office action issued by the Examiner on November 2, 2011 indicates that “regarding the limitations directed to Taiji and Eight Gua graphics, note that the courts have found that matters relating to ornamentations only, which have no mechanical function, cannot be relied upon to patentably distinguish the claimed invention from the prior art. Furthermore, from what has been gleaned by the specification, these graphics provide no utility and are simply decorative/ornamental. As such, it would have been obvious to a person of ordinary skill in the art to provide the decorative/ornamental design to a building for aesthetic purposes”.

The examiner indicates in the "Claim Objections" that:

- "1. Claims 21, 32, 42, 47 and 70 are objected to because of the following informalities: proper names including, but not limited to Yixue, Taiji, and Gua should not be used in the claims. Their definitions are not commonly known to a person of ordinary skill in the art and a proper definition is not provided in the specification. Appropriate correction is required.
2. Although applicant claims that a person of ordinary skill in the art in Chinese culture would have common knowledge of the expressions, examiner maintains that a person of ordinary skill in the art is not familiar with these expressions".

The arguments for the above two comments are as follows:

- (1) The Examiner provides the evidence for the objections to the Taiji and Eight Gua graphics, and further provides the legal basis that "the courts have found that matters relating to ornamentations only, which have no mechanical function". I emphasize that it is wrong for the Examiner to use the above legal basis to negate the inventiveness of "Yixue", "Taiji", and "Gua" in the present patent, since the courts only maintain that the graphics of "Taiji" and "Gua" relate to ornamentations and have no mechanical function; however, "Yixue",

“Taiji”, and “Gua” mentioned in the office action are actually tridimensional ecological structures of “Yixue ecological type, Taiji graphics type, Eight Gua graphics type” rather than graphics, and such tridimensional ecological structures comprises devices and structures having various mechanical functions, e.g., organism cultivation system, ecological electrical supply system, ecological water recycling utilization system and other various functional systems (see claim 21).

Thus, it is wrong for the Examiner to employ only the above basis (i.e., the courts have found that matters relating to ornamentations only, which have no mechanical function) to negate the inventiveness of “Yixue”, “Taiji”, and “Gua”. The present invention is significantly distinguished from the prior art. The distinguished points can be clearly seen from the specification, which, together with the drawings, sufficiently illustrate the functional structure characteristics of the present invention possessing industrial practicability, novelty, and inventiveness. Thus, the conclusion of ornamentation alleged by the examiner is wrong for the present invention. Obviously, the conclusion alleged by the examiner that the present invention is obvious to a person of ordinary skill in the art is wrong. The present invention has the functions of combining itself into a ecological system, and combining with other structures illustrated in the specification and drawings into a large ecological system, so as to protect ecological environments and save

resources, which cannot be achieved by the prior art. Thus, please kindly let the Examiner to withdraw the objection.

(2) The examiner indicates that “although applicant claims that a person of ordinary skill in the art in Chinese culture would have common knowledge of the expressions, examiner maintains that a person of ordinary skill in the art is not familiar with these expressions”.

My arguments are as follows: the scientific name of “Yixue” is “Zhouyi”, which has the history of over five thousand years. All Chinese Americans should know the definition of Yixue. In addition, many architecture companies in the US offer the positions of architecture Fengshui master, and the national flag of South Korea is printed the graphics of Eight Gua. Thus, it can be seen that “Yixue” is not only for ornament, instead, it belongs to a cultural technology having connotation. Accordingly, the principle of “Yixue” is not only popular in China, but also around the world, which should be acknowledged by the Examiner. I integrate the principle of Yixue technology with the tridimensional ecological structure, which should be well-known to a person of ordinary skill in the art (a hypothetical person). It should be emphasized that the technical terms of “Yixue”, “Taiji”, and “Gua” cannot be replaced, since the replaced technical terms will be not familiar to a person of ordinary skill in the art.

Therefore, the Examiner should withdraw the objection that the specific terms “Yixue”, “Taiji”, and “Gua” cannot be included in the claims.

Overall review

The “multifunctional tridimensional combined ecological architecture” of the present application is a large ecological system combined by the special functional structures illustrated in the specification and drawings for maintaining ecological balance, and the ecological structures of Yixue ecological type, Taiji graphics type, Eight Gua graphics type are necessary components of such architecture. The functions of independent combination, integral combination or independent use of these ecological structures of Yixue ecological type, Taiji graphics type, Eight Gua graphics type greatly improve the ecological effect of the ecological system. Such combined technical solutions can be realized by a person of ordinary skill in the art, and such qualified person of ordinary skill in the art should have the capacity of understanding the scientific and engineering principles applicable to the pertinent art. Thus, it is appropriate to use the specific terms “Yixue”, “Taiji”, and “Gua” in the present application, and the Examiner should withdraw the objection.

Conclusion

Given the above, it can be seen that the comment that **claims 32, 42 and**

47 cannot be approved because of the use of the technical terms “Yixue”, “Taiji”, and “Gua” issued by the USPTO on January 15, 2010 is wrong; likewise, the comment that “claims 21, 32, 42, 47 and 70 are objected to because of the following informalities: proper names including, but not limited to Yixue, Taiji, and Gua should not be used in the claims” issued by the examiner on November 2, 2011 is wrong. The examiner’s allegations that the tridimensional ecological structures of Yixue ecological type, Taiji graphics type, Eight Gua graphics type are “ornamental” wrongly destroy the inventiveness of the present application. Because of the above errors made by the Examiner, the present application cannot be approved smoothly and be granted a patent right. Therefore, the Applicant submits the Appeal to the Board of Patent Appeal and interference of the USPTO, and petitions that the Board withdraw the objection so as to grant the present invention a patent right earlier.

Appealer: Zhao Bing,

November 6, 2012.